IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 05/09/2003

Coram

The Hon'ble Mr. Justice P. SATHASIVAM

Writ Petition No. 4469 of 2001
and
W.P.M.P.No. 6326/2001 and W.V.M.P No.1189/2003

Pharmaceutical Manufacturers'
Association of Tamil Nadu,
Block D-1, Baid Metha Complex,
No.183, Anna Salai, Little Mount, .. Petitioner.

-Vs-

1. The Government of Tamil Nadu,
represented by the Secretary,
Department of Labour and
Employment, Fort St. George,
Madras-9.

2. The Commissioner of Labour,
D.M.S. Compound, Anna Salai,
Teynampet, Madras-6.

3. The Tamil Nadu Medical and
Sales Representatives Association,
39, Kamber Street, Abith Colony,
Saidapet, Madras-15. .. Respondents

Petitions filed under Article 226 of the Constitution for issuance of Writ of Certiorari, as stated therein.

For Petitioner : Mr. A.L. Somayaji, Senior counsel
for Mr. S. Jayaraman

For Respondents : Mrs. G. Kavitha, Govt., Advocate
1 and 2.

Mr. K. Chandru, Senior counsel for Mr. M.
Muthupandian:- For 3rd respondent.

:ORDER

By consent of both parties main writ petition itself is taken up for disposal. Pharmaceutical Manufacturers' Association of Tamil Nadu, aggrieved by the fixation of minimum rates of wages for the employment in Medical and Sales Representatives under Minimum Wages Act, 1948 in G.O.(2D) No.39 Labour and Employment (J1) dated 6th November, 2000, has filed the above writ petition to quash the said notification on various grounds.

2. The case of the petitioner Association is briefly stated hereunder: The petitioner is a Society registered under the Societies Registration Act. The pharmaceutical industries who are members of the petitioner Association are all manufacturing units engaged in the manufacture of various types of medicines. There are various types of pharmaceutical industries and they can be classified into big, medium and small industries depending upon the total turn over, number of persons employed, capital outlay etc. Many of the pharmaceutical companies in Tamil Nadu are facing closure due to non-utilisation of their capacities. More over, the prices of 75% of Drugs manufactured and sold are fixed by the Central Government and the prices are fixed by the National Pharmaceutical Pricing Authority under the Drug Price Control Order issued under the Essential Commodities Act. The general level of basic salary to the medeical representatives in Tamil Nadu is in the order of Rs.1,500/- per month. In addition to that, other allowances like vehicle maintenance allowance, daily allowance, H.R. A., medical allowance to the tune of Rs.1,500/- and incentives and commission are also given. In addition to the above, the company also incurs expenses by way of Provident Fund at the rate of 12%, E.S.I. 4%, gratuity 4.17%, bonus 8.33% etc. The above items contribute to 28.5%. Taking all these into consideration on an average a representative will be getting about Rs.3,427/- per month. In view of the present Notification, the manufacturing companies will not only be forced to pay Rs.3,000/- as basic pay to the employees instead of the present basic pay and they will also be compelled to pay other allowances and incentives. This will create anomalous situation. The basic salary plus D.A. as envisaged in the present notification is in the order of Rs.3,300/-per month. In addition other allowances come to Rs.1,500/-. If the other benefits like Provident Fund, E.S.I., Gratuity and bonus are added, it will contribute an additional 28.5% and thus the total amount payable will be Rs.5,740/- per month. This will cause a huge burden coming to several crores of rupees. If the impugned Government Order is implemented, the companies will face a net loss of 2% which will make the units unviable. The Government of Tamil Nadu by constituting a committee without any proper representation, gathered a few details here and there and has passed the impugned Government Order fixing the minimum wages, on the basis of the committee's advice without applying its mind to the relevant details and particulars. Though the Deputy Commissioner of Labour sent a communication dated 24-9-99 to the petitioner asking them to nominate a representative to the committee, thereafter the respondents did not call them nor did they give him any opportunity to put-forth their case. Having no other remedy, the Association has filed the above writ petition.

3. The third respondent-Tamil Nadu Medical and Sales Representatives Association has filed a counter affidavit wherein it is stated that their Association is registered under Trade Union Act, 1926 . The Association has 5200 members. There are approximately 20,000 medical and sales

representatives in Tamil Nadu. Since the Government has powers to appoint a committee of its choice based on the need and requirements, the constitution of the committee in exercise of such powers cannot be questioned by the petitioner. The committee was constituted giving representation to all parties concerned apart from the experts and Government officers. The manufacturers, distributors and the employees were given proper representation by including members in the committee from each party. On the request of the petitioner, a member was also nominated from the petitioner Association in the committee. Therefore, the petitioner cannot challenge the constitution of the committee. Having given their representation to the committee on fixation of minimum wages and having participated in the proceedings without any objection to the constitution of the committee, the petitioner is estopped from challenging the constitution of the committee. Even in their oral representation, they sought for fixation of minimum wages uniformly for all industries without reference, to size, area/zone, turn over or profit. Therefore, the petitioner cannot now contend that the Government failed to further classify the industries based on the size, area, zone etc. Further, the need for fixation of minimum wages in their industry is uniform and one and the same and there is no necessity to further classify the industry based on size/zone etc. The relevant factor for fixation of minimum wages is based on the requirement of the workmen and not the capacity of the industry or employer. For payment of minimum wages, there is no distinction/classification as to big, medium or small industries and profit/financial conditions are not relevant. Since almost all the drugs are taken out from the control of DPCO, except numbering 15 drugs, the members of the petitioner is free to fix their own price. The members of the petitioner Association are earning enormous and huge profit. The contribution of payment towards Provident Fund, E.S.I., bonus, etc., are payable to workman under compulsion of various welfare statutes. The committee recommended for minimum wages only based on requirement of the workmen and family, that too after thorough enquiry and spot inspection all over Tamil Nadu and after getting the views and representations from the employers and the employees. Therefore, the recommendations of the committee and the acceptance of the same by the Government is just, proper, fair and reasonable and it does not call for any interference. The workmen in this industry are subjected to sheer exploitation and they have no bargaining capacity. Therefore, they require fixation of minimum wages. The minimum wages fixed by the Government is fair and reasonable and it does not call for interference.

4. In the light of the above pleadings, I have heard Mr.A.L. Somayaji, learned senior counsel for the petitioner Association, Mrs. G. Kavitha, learned Government Advocate for respondents 1 and 2 and Mr. K. Chandru, learned senior counsel for third respondentSales Representatives Association.

5. (i) Mr. A.L. Somayaji, learned senior counsel for the Pharmaceutical Manufacturers' Association, has raised the following contentions:

(1) The impugned Government Order fixing minimum wages suffers from various infirmities, particularly failure on the part of the Government to apply its mind to relevant facts and materials;
(2) The constitution of the committee itself is not proper, since there is no

proper representation from the manufacturers;
(3) One person who represented the manufacturers is not even a member of any Association;
(4) The committee should have classified the units into big, medium and small units and then fixed the minimum wages. The fixation of same rate of minimum wages of all units irrespective of their size and for all the employees irrespective of their qualification without taking into account the relevant facts into consideration, and fixation of minimum wages based on it is nothing but arbitrary.

(ii) On the other hand, learned Government Advocate by placing the entire records, including the constitution of the committee, deliberations, their report and the ultimate decision of the Government, would contend that the Government after considering all the relevant materials, including the report of the committee, fixed minimum wages, hence there is no valid ground for interference.

(iii) Mr. K. Chandru, learned senior counsel for the third respondent-Medical and Sales Representatives' Association, would contend that the present writ petition filed by the petitioner Association questioning the fixation of minimum wages is not maintainable. A representative of the petitioner Association had participated in the committee. The Government, based on the report of the committee, and the relevant materials, fixed the min imum wages, which is quite reasonable and acceptable. The interference by this Court in a matter like this, when notification fixing minimum wages is in accordance with the provisions and object of the Minimum Wages Act, is very limited.

6. I have carefully considered the rival submissions.

7. In this writ petition, we are concerned with the minimum rates of wages fixed by the Government for the Medical/Sales representatives in the pharmaceutical manufacturers and marketing units and pharmaceutical wholesale distribution units. It is not disputed that Sections 3 (1)(a) and 5 (2) of the Minimum Wages Act, 1948 (hereinafter referred to as "the Act") empower the Government of Tamil Nadu to fix minimum rates of wages in respect of schedule employment. It is also not disputed that employment in medical and sales representatives is a scheduled employment, as defined in Section 2 of the Act. Sections 3 and 4 of the Act empower the Government to fix minimum rates of wages, and Section 5 speaks about the procedure for fixing and revising minimum wages. In order to fix minimum wages for the scheduled employment, the Government can appoint committee or Advisory Board, which shall consist of persons to be nominated by the appropriate Government representing employers and employees in the scheduled employments, who shall be equal in number, and independent persons not exceeding one-third of its total number of members.

8. Now I shall consider whether the Government have followed the relevant provisions of the Act before fixing the minimum wages for the persons in employment in Medical and Sales Representatives. Though the Government have not filed a counter affidavit explaining their position, learned Government

Advocate has placed the entire records relating to fixation of minimum wages. It is seen that based on the representation of the third respondent Association and from various persons, the Government constituted a committee with Selvi D. Sankari as its Chair person. A perusal of the Minutes of the committee and its ultimate report shows that both representatives of employees and employers had participated in the meetings/deliberations. It also shows that the committee inspected various pharmaceuticals in person ascertained facts and figures and other details all over the State and considering the claim of both parties, and after hearing two representatives from the employees and employers, submitted a final report, suggesting minimum rates of wages at Rs.3,000/- per month for pharmaceutical manufacturing or marketing units and medical, sales representatives, Rs.3,300/-per month for pharmaceutical wholesale or distributor units and salesmen. It is further seen from the file that the Government, on receipt of the report and after considering the relevant materials, including the views of the representatives of the employees and employers, accepted the committee's report, fixed the minimum wages as suggested therein and notified the same in the Tamil Nadu Government Gazette. I am satisfied that the Government have fully followed the procedure prescribed, heard the views of the representatives of the employees and employers, considered relevant materials and fixed the minim wages. Though the learned senior counsel for the petitioner would contend that their nominated persons were not heard, the file produced by the Government Advocate shows that a representative of Pharmaceutical Manufacturers' Association participated in the deliberations. I am satisfied that the committee was constituted giving representation to all the parties concerned apart from the experts from the Government side. The employers, the distributors and the employees were given proper representation by including their representatives in the committee. As rightly argued by the respondents, the petitioner did not question the constitution of the committee, when they sought to implead a member from their Association in the committee and a representative from the petitioner Association also gave his consent to act as a member in the committee. It is further seen that though the petitioners' representative failed to attend the meeting and the proceedings in spite of his inclusion in the committee, in fact, one of their representatives did attend the meeting and participated in the deliberations.

9. The other contention that the Government failed to classify the industries based on the size, area, zone etc., cannot be accepted. It is brought to my notice that in the oral representation, the petitioner Association sought for fixation of minimum wages uniformly for all industries without reference to size, area/zone, turn over or profit. Further, fixation of minimum wages in the Pharmaceutical industry is uniform and one and the same and there is no necessity to further classify the industry based on size/zone, etc.

10. Though it is contended that small manufacturers are not in a position to pay the minimum wages, as rightly argued by the learned counsel for the respondents, the relevant factor for fixation of minimum wages is based on the requirement of the workmen and not the capacity of the industry or employer. Minimum wage is fixed to preserve the efficiency of the worker. It is settled law that minimum wages shall also take care of the education of their children, medical requirements and other amenities. For payment of minimum

wages, there is no distinction, classification as to big, medium or small industries and profit/financial conditions are not relevant factors. The minimum wages fixed under the impugned notification is reasonable and it cannot be termed as unfair or unreasonable.

11. It is also brought to my notice that almost all the drugs are taken out from the control of DPCO, except numbering 15 drugs. In such a circumstance, the members of the petitioner Association is free to fix their own price. It is the complaint of the third respondent that the members of the petitioner Association are earning enormous and huge profits. Therefore, there is no difficulty in implementing the minimum wages. The daily allowances is only for the day' s work and not for all the days. Therefore, it cannot be a relevant factor for the implementation of the minimum wages. Likewise, Provident Fund, E.S.I., Bonus, etc., are payable to the workmen under compulsion of various welfare statutes. Therefore, the contribution of payment under those statutes cannot be cited as a reason or inability to implement the minimum wages. Even otherwise, those elements cannot be taken as part of wages because the said benefits are extended to workmen in addition to wages. As rightly argued by the respondents, Bonus is payable once in a year and not paid every month. Further, the interest on Provident Fund is reduced to 9 per cent and E.S.I. is not implemented in all industries. Likewise, incentive is payable only for achievements over and above the targets fixed by the respective management. There is no uniformity in fixing the target and it differs from management to management. Therefore, the incentive cannot also be a relevant factor for the implementation of the minimum wages because it is depending upon certain contingencies, while the requirement for the payment of minimum wages is uniform and one and the same for all workmen.

12. As stated earlier, the minimum wages arrived at and recommended by the committee was only based on the requirement of the workmen and their family, that too after thorough enquiry and spot inspection all over Tamil Nadu and after getting the views and representations from the employers and the employees, as well as certain experts in that field. It is further seen that the committee has convened meetings to get the views of the concerned parties in several areas, and zones and in all main and major cities and towns. Therefore, it cannot be contended that the Government without applying their mind has merely accepted the report of the committee. On the other hand, the recommendation of the committee and the acceptance of the same by the Government is just, proper and reasonable. It is to be noted that the minimum wages fixed was based on the datas prevailing in the years 1998 and 1999, whereas the impugned G.O., was issued only in 20 00. It is the grievance of the third respondent that the said fixation itself requires revision due to the raise in price in cost of living. As observed in C.B. BOARDING AND LODGING v. STATE OF MYSORE, reported in AIR 1970 Supreme Court 2042, the fixation of minimum wages depends on the prevailing economic conditions, the cost of living in a place, the nature of the work to be performed and the conditions in which the work is performed. In the light of the materials placed, particularly the files relating to the constitution of the committee and fixation of minimum wages, I am satisfied that the Government have fully complied with the conditions referred to above and the provisions of the Act.

It is also relevant to note that even if there is any defect in the constitution of committee, in the light of the saving provision, namely, Section 9A of the Act, the contention relating to failure to give proper representation is liable to be rejected. As per Section 9A of the Act, no order of the State Government nominating any person as the Chairman or a member of the Advisory Board or a committee or sub-committee shall be called in question in any manner and no act or proceeding before any Board, committee or sub-committee shall be called in question in any manner in any Court of Law on the ground merely of the existence of any vacancy in or of any defect or irregularity in the constitution of such Board , committee or subcommittee. This provision has been added by the State of Tamil Nadu by Act 47 of 1981. First of all, as discussed earlier, the relevant files show that the committee consists of two representatives from the Management and another two from employees, apart from Government Officers of Labour Department. Further, the committee inspected various areas, zones, municipal towns, cities, heard several persons involving in the subject, visited many manufacturing places and noted various features therein. Further, in the light of the saving provision under Section 9A of the Act, even on the ground of existence of any vacancy or of any defect in the constitution of the committee, the same cannot be questioned.

13. In the light of what is stated above, I do not find any merit in the claim made by the petitioner. On the other hand, the minimum rate fixed by the Government is reasonable and acceptable. Consequently, the writ petition fails and the same is dismissed. No costs. Connected miscellaneous petitions are closed.

R.B.

Index:- Yes
Internet:- Yes.

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